

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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7 SPRINGLAND VILLAGE  
8 HOMEOWNERS ASSOCIATION, a  
Nevada Non-Profit Cooperative  
Corporation,

Plaintiff,

1 JENNIE M. PEARMAN, *et al.*,

## Defendants.

Lead Case, No. 3:16-cv-00423-MMD-WGC

*and*

**FEDERAL NATIONAL MORTGAGE  
ASSOCIATION.**

Member Case, No. 3:16-cv-00520-MMD-WGC

ORDER

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**Plaintiff:**

6 DWIGHT GABRIELSON

## Defendant

#### **8 || And related counterclaims.**

## 0 | L SUMMARY

Pending before this Court is Federal National Mortgage Association's ("Fannie Mae") motion for summary judgment in two related cases.<sup>1</sup> (Lead Case, ECF No. 28; Member Case, ECF No. 17.)<sup>2</sup> In the Member Case, Pyramid Tribe filed a response (ECF

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<sup>5</sup> <sup>1</sup>The same motion was filed in case no. 3:16-cv-00423-MMD-WGC (“Lead Case”) and case no. 3:16-cv-00520-MMD-WGC (“Member Case”).

<sup>6</sup> The motion for summary judgment in the Member Case was terminated when  
<sup>7</sup> these cases were consolidated on January 5, 2018. (Member Case, ECF No. 25.)  
<sup>8</sup> Because the motion deals with the counterclaims in the Member Case, the Court still  
addresses the motion as it pertains to the Member Case.

1 No. 18), and Fannie Mae filed a reply (ECF No. 24). No response was filed in the Lead  
2 Case. For the following reasons, Fannie Mae's motion is granted.

3 **II. BACKGROUND**

4 Defendant Dwight Carlson as Trustee for Pyramid Tribe TR-116 ("Pyramid Tribe")  
5 purchased property ("Property") at a homeowner association foreclosure sale ("HOA  
6 Sale"), which it contends extinguished a deed of trust ("DOT") then encumbering the  
7 Property. (Main Case, ECF No. 28 at 2.) At the time of the HOA Sale, Fannie Mae  
8 owned a loan secured by the Property and was the record beneficiary of the associated  
9 DOT. (*Id.*) In Fannie Mae's motion for summary judgment, it contends that (1) the  
10 foreclosure sale could not have extinguished the deed of trust due to the effect of 12  
11 U.S.C. § 4617(j)(3) ("Federal Foreclosure Bar") and (2) that Pyramid Tribe's claims for  
12 unjust enrichment and equitable mortgage fail. (Lead Case, ECF No. 28 at 9-14;  
13 Member Case, ECF No. 17 at 9-14.)

14 **III. LEGAL STANDARD**

15 "The purpose of summary judgment is to avoid unnecessary trials when there is  
16 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,  
17 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the  
18 pleadings, the discovery and disclosure materials on file, and any affidavits "show that  
19 there is no genuine issue as to any material fact and that the moving party is entitled to a  
20 judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An  
21 issue is "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-  
22 finder could find for the nonmoving party and a dispute is "material" if it could affect the  
23 outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
24 242, 248 (1986). Where reasonable minds could differ on the material facts at issue,  
25 however, summary judgment is not appropriate. See *id.* at 250-51. "The amount of  
26 evidence necessary to raise a genuine issue of material fact is enough 'to require a jury  
27 or judge to resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral*  
28 *Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (*quoting First Nat'l Bank v. Cities Serv. Co.*, 391

1 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views all  
2 facts and draws all inferences in the light most favorable to the nonmoving party. *Kaiser*  
3 *Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

4 The moving party bears the burden of showing that there are no genuine issues  
5 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once  
6 the moving party satisfies Rule 56's requirements, the burden shifts to the party resisting  
7 the motion to "set forth specific facts showing that there is a genuine issue for trial."  
8 *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the  
9 pleadings but must produce specific evidence, through affidavits or admissible discovery  
10 material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,  
11 1409 (9th Cir. 1991), and "must do more than simply show that there is some  
12 metaphysical doubt as to the material facts." *Orr v. Bank of Am., NT & SA*, 285 F.3d 764,  
13 783 (9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.  
14 574, 586 (1986)). "The mere existence of a scintilla of evidence in support of the  
15 plaintiff's position will be insufficient." *Anderson*, 477 U.S. at 252.

16 **IV. DISCUSSION**

17 Fannie Mae contends that the Federal Foreclosure Bar protects its DOT such that  
18 the DOT still encumbers the Property. Fannie Mae further contends that Pyramid Tribe's  
19 counterclaims fail as a matter of law.

20 **A. Federal Foreclosure Bar**

21 The Federal Foreclosure Bar prohibits nonconsensual foreclosure of Federal  
22 Housing Finance Agency ("FHFA") assets. *Berezovsky v. Moniz*, 869 F.3d 923, 925 (9th  
23 Cir. 2017). As a result, the Federal Foreclosure Bar generally protects Fannie Mae's  
24 property interests from extinguishment if Fannie Mae was under FHFA's

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1 conservatorship, possessed an enforceable property interest at the time of the HOA  
2 Sale, and did not consent<sup>3</sup> to such extinguishment. See *id.* at 933.

3 Here, it is undisputed that Fannie Mae was placed into conservatorship under  
4 FHFA in September 2008 and did not consent to the HOA Sale extinguishing or  
5 foreclosing Fannie Mae's interest in the Property. (Main Case, ECF No. 28 at 4, 6.)  
6 Fannie Mae acquired an enforceable property interest in the Property on June 24, 2014,  
7 and continued to hold that interest at the time of the HOA Sale on January 22, 2016. (*Id.*  
8 at 5.) This is amply demonstrated in both the public record and Fannie Mae's business  
9 records. (See ECF No. 28-5 at 2; ECF No. 28-2 at 2-4; ECF No. 28-3 at 2-14).

10 The Court finds that the Federal Foreclosure Bar protected Fannie Mae's DOT  
11 from extinguishment given that Fannie Mae held an enforceable interest in the Property  
12 at the time of the HOA Sale, was under the conservatorship of FHFA at the time of the  
13 HOA Sale, and did not consent to the HOA Sale extinguishing or foreclosing Fannie  
14 Mae's interest in the Property. Accordingly, the HOA Sale did not extinguish Fannie  
15 Mae's interest in the Property, and the DOT therefore continues to encumber the  
16 Property.

17 **B. Pyramid Tribe's Counterclaims**

18 Fannie Mae contends that Pyramid Tribe has failed to allege any specific facts to  
19 support its counterclaims. (Related Case, ECF No. 17 at 13-14.) The Court agrees.  
20 While Pyramid Tribe initially alleged that it expended funds and resources in connection  
21 with the acquisition and maintenance of the Property (purportedly giving rise to unjust

22 <sup>3</sup>Pyramid Tribe argues that FHFA's consent is not required because Fannie Mae  
23 purchased the loan in 2006, prior to the Federal Foreclosure Bar's enactment (Member  
24 Case, ECF No. 18 at 4-5), but the date Fannie Mae purchased the loan is irrelevant to  
the inquiry under *Berezovsky*. Indeed, the Ninth Circuit Court of Appeals considered  
similar facts in *Berezovsky*. There, the original borrowers' mortgage was secured by a  
deed of trust recorded on March 5, 2007, prior to the Federal Foreclosure Bar's  
enactment, but the Federal Foreclosure Bar still protected Freddie Mac's deed of trust  
from extinguishment. *Berezovsky*, 869 F.3d at 926, 933.

25 Pyramid Tribe also argues that the Court should avoid considering 12 U.S.C. §  
1825(b)(2) in its analysis. (ECF No. 18 at 5-7.) The Court need not address this  
argument as the Court considers the issues presented in this case under 12 U.S.C. §  
4617(j)(3).

1 enrichment and equitable mortgage claims) (Member Case, ECF No. 11 at 5-6), Pyramid  
2 Tribe has failed to support these conclusory statements with allegations describing the  
3 expenditures. Accordingly, Fannie Mae has carried its burden of showing no genuine  
4 issue of material fact exists as to the unjust enrichment and equitable mortgage  
5 counterclaims. See *Nissan Fire & Marine Ins. Co. v. Fritz Cos., Inc.*, 210 F.3d 1099,  
6 1102 (9th Cir. 2000) (“In order to carry its burden of production, the moving party must  
7 either produce evidence negating an essential element of the nonmoving party’s claim or  
8 defense or show that the nonmoving party does not have enough evidence of an  
9 essential element to carry its ultimate burden of persuasion at trial.”); see also *Anderson*  
10 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986) (“[A] party opposing a properly  
11 supported motion for summary judgment may not rest upon mere allegation or denials of  
12 his pleading, but must set forth specific facts showing that there is a genuine issue for  
13 trial.”).

14 **V. CONCLUSION**

15 The Court notes that the parties made several arguments and cited to several  
16 cases not discussed above. The Court has reviewed these arguments and cases and  
17 determines that they do not warrant discussion as they do not affect the outcome of  
18 Fannie Mae’s motions.

19 It is therefore ordered that Fannie Mae’s Motions for Summary Judgment in the  
20 Lead Case, 3:16-cv-00423 (ECF No. 28) and Member Case, 3:16-cv-00520 (ECF No.  
21 17) are granted. The Court finds that the HOA Sale did not extinguish Fannie Mae’s  
22 interest in the Property and the DOT continues to encumber the Property.

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1           The Clerk is instructed to enter judgment in favor of Fannie Mae on all claims and  
2 counterclaims<sup>4</sup> and close both cases.

3           DATED this 10<sup>th</sup> day of January 2018.

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MIRANDA DU  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup>Pyramid Tribe only asserted counterclaims in the Related Case. (Related Case, ECF No. 11 at 5-6.)